

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARGARET MAREALLE, on behalf of
M.M.B., a minor,

Plaintiff,

v.

CAROLYN W COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. C15-1130-TSZ-MAT

REPORT AND RECOMMENDATION
RE: SOCIAL SECURITY
DISABILITY APPEAL

Margaret Marealle, on behalf of her minor child, M.M.B., seeks judicial review of the final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied plaintiff's application for supplemental security income (SSI) child's benefits after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court recommends the Commissioner's decision be AFFIRMED.

FACTS AND PROCEDURAL HISTORY

Plaintiff was born on XXXX, 2000.¹ (AR 25.) He was a school-age child on September

¹ The Court hereinafter refers to M.M.B. as plaintiff. Plaintiff's date of birth is redacted back to the year in accordance with Federal Rule of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case Files.

1 9, 2010, the date the application was filed and remained a school-age child through the hearing
2 and decision date. (AR 22, 25.)

3 Plaintiff filed an SSI application on September 9, 2010, alleging disability beginning July
4 14, 2000. (AR 22.) His claim was denied initially and on reconsideration.

5 On January 3, 2013, ALJ Stephanie Martz held a hearing, taking testimony from plaintiff
6 and from Kenneth N. Asher, Ph.D., an impartial medical expert. (AR 22.) After the hearing,
7 additional exhibits were admitted to the record. (AR 344-57, 634-64.) On February 19, 2013, the
8 ALJ issued a decision finding plaintiff not disabled. (AR 22-37.)

9 Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review on
10 August 4, 2014 (AR 4-9), making the ALJ's decision the final decision of the Commissioner.
11 Plaintiff then appealed this final decision of the Commissioner to this Court.

12 **JURISDICTION**

13 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §§ 405(g)
14 and 1383(c)(3).

15 **DISCUSSION**

16 This case involves review of the denial of application for SSI child benefits. "An
17 individual under the age of 18 shall be considered disabled . . . if that individual has a medically
18 determinable physical or mental impairment, which results in marked and severe functional
19 limitations, and . . . which has lasted or can be expected to last for a continuous period of not less
20 than 12 months." *See* 42 U.S.C. § 1382c(a)(3)(C)(i).

21 The social security regulations set forth a three-step sequential evaluation process for
22 determining whether a child is disabled. *See* 20 C.F.R. § 416.924. At step one, it must be
23 determined whether the claimant is performing substantial gainful activity. The ALJ found

1 plaintiff was ten years old at the time he filed for benefits, is currently a school-age child, and
2 has not engaged in substantial gainful activity since the application date. (AR 25.)

3 If the claimant is not performing substantial gainful activity, it must be determined, at
4 step two, whether the claimant has a “severe” medically determinable impairment or
5 combination thereof. The ALJ found plaintiff has the following severe impairments: pervasive
6 development disorder, not otherwise specified (NOS), attention deficit hyperactivity disorder
7 (ADHD), learning disorder, and anxiety disorder.

8 If the claimant has a severe impairment or combination of impairments that meets the
9 duration requirement, it must be determined at step three whether the impairment meets,
10 medically equals, or functionally equals a listed impairment in 20 C.F.R. § 404, Part B,
11 Appendix 1, Subpart P. If the impairment meets or medically equals a listing, the claimant will
12 be found disabled. If the impairment does not meet or medically equal a listed impairment, it
13 must be determined whether the impairment *functionally* equals a listed impairment by assessing
14 the child’s limitations in six broad areas of functioning called “domains.” *See* 20 C.F.R. §
15 416.926a. At step three, the ALJ found plaintiff did not have an impairment or combination of
16 impairments that met, medically equaled, or functionally equaled a listing.

17 This Court’s review of the ALJ’s decision is limited to whether the decision is in
18 accordance with the law and the findings supported by substantial evidence in the record as a
19 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). *Accord Marsh v. Colvin*, 792
20 F.3d 1170, 1172 (9th Cir. 2015) (“We will set aside a denial of benefits only if the denial is
21 unsupported by substantial evidence in the administrative record or is based on legal error.”)
22 Substantial evidence means more than a scintilla, but less than a preponderance; it means such
23 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

1 *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational
 2 interpretation, one of which supports the ALJ's decision, the Court must uphold that decision.
 3 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

4 Plaintiff argues the ALJ erred in her step three conclusion regarding Listing 112.10 for
 5 autistic or pervasive development disorder,² in rejecting the opinion of Dr. Lewis Humphreys,
 6 and in her consideration of evidence associated with his use of Adderall. He requests remand for
 7 further proceedings. The Commissioner argues the ALJ's decision has the support of substantial
 8 evidence and should be affirmed.

9 Listing 112.10

10 An impairment "meets" a listed impairment if it satisfies all of the criteria described in
 11 the Listing. 20 C.F.R. § 416.925(c)(3). An impairment "medically equals" a listed impairment
 12 "if it is at least equal in severity and duration to the criteria of any listed impairment." §
 13 416.926(a). An impairment "functionally equals" a listed impairment if it results in marked
 14 limitations in at least two of six functional domains or an extreme limitation in at least one
 15 domain. § 416.926a(a). A determination of functional equivalence is the responsibility of the
 16 state agency medical or psychological staff at the initial and reconsideration levels, of an ALJ at
 17 the hearing level, and of the Appeals Council at that level. 20 C.F.R. § 416.926a(n). Plaintiff
 18 here avers error in the ALJ's failure to find his pervasive development disorder meets or is
 19 functionally equivalent to Listing 112.10.³

21 ² While plaintiff refers to Listing 12.10, the listing for adults, the Court addresses Listing 112.00,
 the listing for children.

22 ³ Plaintiff does not challenge the ALJ's finding that he does not meet the requirements of Listing
 23 112.10 for Autistic Disorder, or the requirements of Listing 112.11 for ADHD. (*See* AR 25-26 (finding,
 with respect to Listing 112.11, that the evidence showed cognitive function in the low average range, with
 full scale IQ scores of 87 and 83; moderate social impairment, with reports of parents and teachers

1 A. Meeting Requirements

2 In order to meet the requirements of Listing 112.10, plaintiff must establish both of the
3 following “A” criteria: (a) Qualitative deficits in the development of reciprocal social interaction;
4 and (b) Qualitative deficits in verbal and nonverbal communication and in imaginative activity.
5 *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1, Listing 112.10. Plaintiff also bears the burden of
6 establishing “marked” impairment or difficulty in at least two of the following four “B” criteria:
7 (a) age-appropriate cognitive/communicative function; (b) age-appropriate social functioning; (c)
8 age-appropriate personal functioning; or (d) maintaining concentration, persistence, or pace. *See*
9 20 C.F.R. Pt. 404, Subpt. P, App. 1, Listings 112.02(B)(2), 112.10(B).

10 The ALJ found plaintiff did not meet the “A” criteria for Listing 112.10 because he does
11 not have qualitative deficits in development of reciprocal social interaction, and qualitative
12 deficits in verbal and nonverbal communication and imaginative activity. (AR 25.) She found
13 plaintiff did not meet the “B” criteria because the evidence established only one marked
14 impairment – in attending to and completing tasks, which may translate to marked difficulties in
15 maintaining concentration, persistence, and pace – rather than the two marked impairments
16 required.

17 As observed by the Commissioner, plaintiff bases his contention he met the criteria for
18 Listing 112.10 on the opinions expressed by Dr. Humphreys in a July 11, 2012 letter. His
19 argument is, thus, dependent on his assignment of error in the consideration of Dr. Humphreys’
20 opinions. As described below, the Court finds no error in relation to Dr. Humphreys and no

21 _____
22 indicating moderate interference with social interactions across settings, and plaintiff’s testimony he
23 maintained two or three social relationships, participated in boy scouting activities, and did not engage in
disputes with other students at school; and moderate impairment in personal functioning, given that, while
his mother reported he had problems sleeping in his own room, his teacher indicated he had no observed
difficulties with self-care).)

1 corresponding error in the ALJ's conclusion as to Listing 112.10.

2 Dr. Humphreys examined plaintiff in November and December 2011 for possible autism
3 spectrum disorder. (AR 811-13 and AR 806-10.) He initially diagnosed plaintiff with learning
4 disorder, NOS, and ADHD, and assigned a global assessment of functioning (GAF) score of 65
5 (AR 813), indicating he had "some mild symptoms . . . OR some difficulty in social,
6 occupational, or school functioning . . . , but generally functioning pretty well, has some
7 meaningful interpersonal relationships." Diagnostic and Statistical Manual of Mental Disorders
8 34 (4th ed. 2000) (DSM-IV-TR).⁴ Dr. Humphreys thereafter received records from plaintiff's
9 school, conducted an individual assessment, administered an Autism Diagnostic Interview-
10 Revised (ADI-R) with plaintiff's parents, and obtained Social Responsiveness Scale (SRS)
11 responses from plaintiff's parents and his teacher. (AR 806-10.) Dr. Humphreys concluded that,
12 because there was not a clear total of the necessary diagnostic criteria for a diagnosis of Autistic
13 Disorder, a diagnosis of pervasive development disorder, NOS, provided the best fit. (AR 809.)
14 He assigned a GAF of 60 (AR 810), reflecting moderate symptoms or moderate difficulty in
15 social, occupational, or school functioning. DSM-IV-TR at 34.

16 Subsequently, in a letter dated July 11, 2012, Dr. Humphreys referred back to his
17 December 2011 report, and listed his initial and final diagnoses and the types of testing
18 conducted. Dr. Humphreys opined:

19 As described in more detail in the above referenced report, [M.M.B.] has
20 qualitative deficits in reciprocal social interaction (A2a) and qualitative deficits in

21 ⁴ The most recent version of the DSM does not include a GAF rating for assessment of mental
22 disorders. DSM-V at 16-17 (5th ed. 2013). While the Social Security Administration continues to
23 receive and consider GAF scores from "acceptable medical sources" as opinion evidence, a GAF score
cannot alone be used to "raise" or "lower" someone's level of function, and, unless the reasons behind the
rating and the applicable time period are clearly explained, it does not provide a reliable longitudinal
picture of the claimant's mental functioning for a disability analysis. Administrative Message 13066
("AM-13066").

1 verbal and nonverbal communication (A2b). This results in marked difficulty in
2 maintaining social functioning (B2). His prior diagnosis of ADHD, Inattentive
Type results in marked difficulties maintaining concentration.

3 (AR 844.)

4 Because the record contained contradictory opinion from other physicians (*see* AR 28-
5 30), the ALJ was required to provide “specific and legitimate reasons” supported by substantial
6 evidence in the record for rejecting the opinions of Dr. Humphreys. *Lester v. Chater*, 81 F.3d
7 821, 830-31 (9th Cir. 1996). The ALJ agreed with Dr. Humphreys’ opinion regarding
8 concentration, finding it consistent with the evidence, including test results showing problems
9 with hyperactivity and impulsivity, and cognitive tests showing deficits in the ability to sustain
10 attention. (AR 30.) She gave little weight to Dr. Humphreys’ opinion that plaintiff had “marked
11 social deficits, because he does not explain how he arrived at this conclusion.” (*Id.*) The ALJ
12 further stated: “Moreover, Dr. Humphreys did not review any of the recent information from the
13 school district, including the [Social Skills Improvement System (SSIS)] test results showing that
14 the claimant’s social skills were not marked but ‘below average,’ or the claimant’s parent’s
15 rating of the claimant’s behavior as ‘average’ for his age.” (*Id.* (citing AR 829-30).)

16 Plaintiff disputes the ALJ’s assertion that Dr. Humphreys did not provide an explanation,
17 arguing Dr. Humphreys based his opinion on his earlier, detailed December 2011 evaluation
18 report. However, plaintiff does not identify and the Court does not find any portion of Dr.
19 Humphreys’ report providing an explanation as to how the qualitative deficits identified
20 amounted to a marked limitation in social functioning sufficient to establish the B criteria for
21 Listing 112.10. As reflected in the ALJ’s decision, the October 2011 report from Dr. Humphreys
22 included results inconsistent with such a conclusion, including ADI-R responses noting “some
23 difficulties” in reciprocal social interaction. (AR 29-30, 807-08.) While the SRS responses from

1 plaintiff's mother placed plaintiff in the severe range for interference with social interactions
2 across settings, the responses from both his father and teacher fell within the mild to moderate
3 range and indicated deficits in reciprocal social behavior consistent with mild or high functioning
4 autism spectrum conditions. (AR 28, 808-09.) Dr. Humphreys' own testing revealed
5 "impairments" in social functioning, with no indication as to degree of such impairments, as well
6 as other information detracting from a conclusion the degree of impairment satisfied the B
7 criteria for Listing 112.10. (AR 809 (noting plaintiff's "one long-standing friendship with
8 another child" and motivation to have friends, but failure to "develop peer relationships
9 appropriate to development level, and the parents' report that he displays emotional reciprocity,
10 but that it was "not completely clear that social reciprocity" was present).)

11 The ALJ, as such, properly rejected Dr. Humphreys' opinion as to the B criteria based on
12 the failure to provide any explanation. *See Thomas*, 278 F.3d at 957 ("The ALJ need not accept
13 the opinion of any physician, including a treating physician, if that opinion is brief, conclusory,
14 and inadequately supported by clinical findings."); and *Holohan v. Massanari*, 246 F.3d 1195,
15 1202 (9th Cir. 2001) ("[T]he regulations give more weight to opinions that are explained than to
16 those that are not."). *Cf. Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) ("[T]he ALJ
17 may 'permissibly reject[] . . . check-off reports that [do] not contain any explanation of the bases
18 of their conclusions.'") (quoting *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996).) To the
19 extent plaintiff disagrees with the ALJ's interpretation of the evidence from Dr. Humphreys, he
20 fails to demonstrate that interpretation was unreasonable or irrational. *See Morgan v.*
21 *Commissioner of the SSA*, 169 F.3d 595, 599 (9th Cir. 1999) ("Where the evidence is susceptible
22 to more than one rational interpretation, it is the ALJ's conclusion that must be upheld.")

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1 Plaintiff next contends the ALJ erred in rejecting Dr. Humphreys' opinion on the grounds
2 that the doctor did not review any of the recent information from the school district. He points to
3 the absence of any reason in the ALJ's decision as to why a clinical psychologist must review
4 school psychological test results in order to diagnose a mental health or developmental disability
5 condition, and no evidence in the record showing the failure to ask for and review school testing
6 results "somehow violates the standard of care or required professional practices for a clinical
7 psychologist who evaluates a minor patient who is attending school." (Dkt. 33 at 7.)

8 Both consistency with the record as a whole and the extent to which a physician is
9 familiar with other information in the case record are relevant factors to consider in deciding the
10 weight to give a medical opinion. 20 C.F.R. § 416.927(c). Contrary to plaintiff's suggestion, the
11 ALJ did not find Dr. Humphreys was unable to render a diagnosis or provided insufficient
12 medical care as a result of the failure to consider school testing results. The ALJ, instead,
13 reasonably considered that, at the time he rendered his July 2012 opinion, Dr. Humphreys was
14 unaware of testing scores reflecting, at most, below average and average social skills.

15 Nor does plaintiff demonstrate error by pointing to Dr. Humphreys' consideration of the
16 SRS responses obtained at the time of his December 2011 evaluation. In fact, while his Mother's
17 total response score and some individual portions of his teacher's responses support severe
18 interference with social interactions, the responses from both his father and teacher as a whole
19 supported only mild to moderate impairment, with some individual scores from his mother, in
20 the areas of social awareness, social cognition, and social motivation, also falling within the mild
21 to moderate range. (AR 808.) Moreover, in discussing these scores, Dr. Humphreys did not
22 assign any greater value to plaintiff's Mother's scores or otherwise indicate that any of the scores
23 supported a finding of marked social deficits. The ALJ's interpretation of this evidence and the

1 evidence in the record as a whole was rational. *See Morgan*, 169 F.3d at 599.

2 B. Functional Equivalence

3 As stated above, functional equivalence to a listed impairment requires a showing of
4 marked limitations in at least two of six functional domains or an extreme limitation in at least
5 one domain. 20 C.F.R. § 416.926a(a). The six functional domains are (1) acquiring and using
6 information; (2) attending to and completing tasks; (3) interacting with and relating to others; (4)
7 moving about and manipulating objects; (5) caring for oneself; and (6) health and physical well-
8 being. § 416.926a(b)(1)(i)-(vi). A marked limitation “interferes seriously with [the child’s]
9 ability to independently initiate, sustain, or complete activities.” § 416.926a(e)(2). An extreme
10 limitation “interferes very seriously” with those things. § 416.926a(e)(3).

11 The Commissioner considers test scores together with all other relevant information in
12 assessing whether there is a marked or extreme limitation within a particular domain. §
13 416.926a(e)(1). A limitation will be deemed “marked” if there is a valid score two standard
14 deviations below the mean “on a comprehensive standardized test designed to measure ability or
15 functioning in that domain, and [the claimant’s] day-to-day functioning in domain-related
16 activities is consistent with that score.” § 416.926a(e)(2)(iii). A limitation in a domain will be
17 considered “extreme” if the same type of test score is three standard deviations or more below
18 the mean and consistent with the claimant’s day-to-day functioning in that domain. §
19 416.926a(e)(3)(iii). However, test scores alone cannot establish a “marked” or “extreme”
20 limitation in a domain. §§ 416.924a(a)(1)(ii), 416.926a(e)(4).

21 The ALJ found plaintiff had marked limitations in attending and completing tasks, but
22 less than marked limitations in interacting and relating to others, moving about and manipulating
23 objects, self-care, and health and physical well-being. (AR 33-36 (also providing explanations as

1 to considerations relevant to these domains).) Plaintiff avers error in the failure to find extreme
2 limitations in attending and completing tasks and interacting and relating to others, or at least
3 marked limitations in both those areas and in the area of self-care. The Court, for the reasons set
4 forth below, finds no error established.

5 In finding a marked limitation in attending and completing tasks, the ALJ pointed to
6 plaintiff's second grade teacher's observation of significantly elevated levels of hyperactivity,
7 attention problems, and anxiety, all affecting his classroom learning; IQ testing reflecting his
8 ability to sustain attention, concentration, and exert mental control were seen as weaknesses
9 relative to his nonverbal reasoning abilities; and the observation of a psychologist that he
10 appeared to have difficulty sustaining attention, requiring frequent prompts to continue tasks.
11 (AR 33.) She added that, "by all accounts, [plaintiff's] attention and concentration improved
12 considerably in 2012, when he began treatment with the medication, Adderall." (AR 33.)

13 In finding a less than marked limitation in interacting and relating to others, the ALJ
14 pointed to the Father's and teacher's responses on the SRS test, and acknowledged his Mother's
15 SRS responses, but noted plaintiff's own report of having two or three friends and his testimony
16 that he got along with other students at his school and had never been disciplined for his
17 behavior. (AR 34.) She also observed that, on a Behavior Rating Inventory Executive Function
18 (BRIEF) test, his "mother and father both rated [his] behavior problems in the average range,
19 indicating no concerns, despite some areas of struggle." (*Id.*)

20 In considering plaintiff's ability to care for himself, the ALJ acknowledged the testimony
21 of plaintiff's mother that he required daily prompting to complete his homework and household
22 chores, declined to eat most foods or sleep in his own bed, and that his second grade teacher
23 noted he had serious problems identifying and asserting his emotional needs and knowing when

1 to ask for help. (AR 35.) However, plaintiff's fourth grade teacher noted plaintiff "demonstrated
2 no deficiencies in caring for his physical or emotional needs in the school environment." (*Id.*)

3 In support of his contention of an extreme limitation in attending and completing tasks,
4 plaintiff describes his overall score and individual scores on a May 2012 BRIEF test as more
5 than three standard deviations below the mean. He points to his Mother's SRS responses and
6 one SRS response of his teacher as more than three standard deviations below the mean in areas
7 relevant to interacting and relating to others. Finally, plaintiff states that test results from a May
8 2012 Behavior Assessment Scale for Children, Second Edition (BASC-2) contain scores that are
9 two standard deviations below mean in categories relevant to both interacting and relating to
10 others and self-care. Plaintiff maintains that, based on these standardized tests alone, he should
11 be rated as having extreme limitations in attending and completing tasks and interacting and
12 relating to others and marked limitations in self-care. He alternatively contends he satisfies these
13 standards "based upon all of the cumulative evidence." (Dkt. 33 at 3-4.)

14 As the Commissioner observes, plaintiff failed to comply with two separate orders from
15 the Court (*see* Dkts. 21 & 32) in not including citations to the record associated with the test
16 scores he relies on in support of his arguments. In any event, even assuming the scores support
17 the necessary deviations, test scores alone cannot establish either a marked or an extreme
18 limitation in any domain. 20 C.F.R. §§ 416.924a(a)(1)(ii), 416.926a(e)(4). Plaintiff also fails to
19 point to evidence of day-to-day functioning activities related to any of these domains and
20 consistent with relevant test scores, as is necessary for a finding of an extreme or marked
21 limitation. § 416.926a(e)(3)(iii). Nor does plaintiff specify what other evidence in the record he
22 maintains would cumulatively allow for such a determination, or otherwise raise specific
23 challenges to the ALJ's interpretation of the evidence.

1 The ALJ is responsible for determining credibility, resolving conflicts in the testimony,
2 and resolving ambiguities in the record. *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d
3 1090, 1098 (9th Cir. 2014). Plaintiff does not provide any legitimate basis for finding error in
4 the ALJ’s analysis or undermine the substantial evidence support for her conclusions. The ALJ’s
5 determinations are rational and should not be disturbed.

6 Assessment of ADHD and Impact of Adderall

7 Plaintiff’s remaining assignments of error relate to the ALJ’s consideration of the impact
8 of Adderall medication. Plaintiff avers the ALJ erred in concluding his condition improved and
9 he was no longer disabled when he started taking Adderall in March 2012. He argues, with no
10 further discussion, that there “really is no substantial evidence in the record to show what effect
11 the Adderall actually had on [him] – just a subjective conclusion.” (Dkt. 33 at 7.) Plaintiff
12 further contends that, even if he was no longer disabled after he began to take Adderall, the ALJ
13 erred in not determining when his disability ceased and by not awarding benefits from his
14 September 9, 2010 application date until the cessation of his disability.

15 Plaintiff misconstrues the ALJ’s decision. The ALJ did not find plaintiff was no longer
16 disabled once he began to take Adderall; she found plaintiff not disabled at any point in time
17 since his application date. (*See* AR 36.)

18 Nor did the ALJ otherwise err in considering plaintiff’s use of Adderall. In describing
19 the medical evidence of record, the ALJ noted plaintiff began to take Adderall for his ADHD in
20 March 2012 and, “by all reports, his concentration and attention improved significantly.” (AR
21 29.) Plaintiff “was noted to be much more focused” and his teacher observed his “attention and
22 completion of work greatly improved.” (*Id.*) His teacher also reported a marked improvement in
23 his reading assessment, including a jump from the “22nd percentile of the national norm to the

1 52nd percentile, placing his reading assessment just above the national average for his grade
2 level.” (*Id.*) In addition, plaintiff testified at hearing that, since starting this medication, “he has
3 been doing well keeping up with homework, and that his grades were all ‘A’s,’ with the
4 exception of science, in which he earned a ‘B-minus.’” (*Id.*) The ALJ thereafter reasonably
5 noted, in finding a marked limitation in attending and completing tasks, that plaintiff’s attention
6 and concentration improved considerably in 2012, when he began taking Adderall. (AR 33.)
7 Plaintiff does not present and the Court does not find any error in this assessment.

8 CONCLUSION

9 This matter should be **AFFIRMED**.

10 DEADLINE FOR OBJECTIONS

11 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
12 served upon all parties to this suit within **fourteen (14) days** of the date on which this Report and
13 Recommendation is signed. Failure to file objections within the specified time may affect your
14 right to appeal. Objections should be noted for consideration on the District Judge’s motions
15 calendar for the third Friday after they are filed. Responses to objections may be filed within
16 **fourteen (14) days** after service of objections. If no timely objections are filed, the matter will
17 be ready for consideration by the District Judge on **October 21, 2016**.

18 DATED this 6th day of October, 2016.

19
20 

21 Mary Alice Theiler
22 United States Magistrate Judge
23